

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3658 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JABUBEN W/O AMRATBHAI RAMABHAIVAGHRI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

Mr. Nigam Shukla, learned Addl.P.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/10/96

ORAL JUDGMENT

1. This Special Civil Application is directed against the petitioner's detention order dated 19-4-96 passed by the Police Commissioner, Ahmedabad City whereby she has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on the same day i.e. 19-4-96 and

since then the petitioner is under detention lodged at Sabarmati Central Prison, Ahmedabad.

2. This Special Civil Application was filed on 14-5-96 and on 15-5-96 Rule was issued and made returnable on 24-6-96. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that against the present petitioner 7 criminal cases under the Bombay Prohibition Act were registered with regard to the possession and sale of unauthorised country liquor from 5 to 55 liters during the year 1994, 1995 and 1996. After noticing the allegations of the aforesaid criminal cases, the detaining authority has considered the evil consequences of the country liquor, has referred to the incident of Lattha Kand with which the petitioner was not concerned. It has been noted by the detaining authority that the petitioner is engaged in anti social activities and that she was a known bootlegger. Reference has been then made to the incidents of 25-2-96 and 22-3-96 about which the witnesses have stated that the petitioner alongwith her associates has been pressurising witnesses to store the unauthorised liquor in the house of the witness and when he refused, the petitioner and her associates had publicly beaten the witness, the witness had cried for help and the crowd had assembled. The petitioner and her associates then ran after the members of the crowd with an open Chhari to kill them and that there was a helter skelter of the people and thus the atmosphere of terror was created. With reference to the incident dated 22-3-96 it has been stated by the witness that the witness was publicly beaten by the petitioner - taking the witness to be a police informer and the petitioner and her associates had ran after the members of the crowd who came to the rescue of the witness, he has been using naked sharp weapon and the routine life of the people is disturbed. In all 4 witnesses have deposed against the petitioner with regard to these incidents and the detaining authority was requested to keep the identity of the witnesses to be secret and, therefore, the detaining authority has invoked the provisions of S.9(2) of the Act. The detaining authority, having satisfied that the proceedings of externment may not serve the purpose to prevent the petitioner from carrying on the bootlegging and anti social activities and holding the petitioner to be a bootlegger and that she has repeatedly involved herself in anti social activities, she had become a

threat to the public order, found that the detention order was necessary.

4. The impugned detention order has been challenged on more than one grounds, but the learned counsel for the petitioner has pressed that even if all the allegations levelled against the petitioner are taken to be true on its face value, no case of breach of public order is constituted and at the most it can be said to be a case of breach of law and order.

5. I have considered the submissions made on behalf of the petitioner. Very recently on 4-10-96 a decision had been rendered by this Court in Special Civil Application No.3879 of 1996, after considering the various Supreme Court decisions on the point as also the decision of this Court, that allegations and materials, such as have been relied upon in the instant case, do not constitute a case of breach of public order. It can at the most be said to be a case of breach of law and order. The grounds of breach of law and order are entirely different and it stands on a distinct footing in comparison to those of the breach of the public order. Such allegations and grounds are not at all germane to the considerations of breach of public order so as to justify the passing of the detention order. Therefore, the allegations and materials, as have been relied upon by the detaining authority in the grounds of detention while passing the order dated 19-4-96 do not justify the passing of the detention order as the ingredients of breach of public order are wanting in the facts of this case.

6. Accordingly this Special Civil Application is allowed. The impugned detention order dated 19-4-96 passed by Police Commissioner, Ahmedabad City is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set her at liberty forthwith, if not required in any other case. Rule is made absolute.